

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

RON BLOCKER,

Plaintiff,

v.

**EQUITY GROUP EUFAULA
DIVISION, LLC,**

Defendant.

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CASE NO.: 2:07cv.722 MHT-WC

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

COMES NOW the Defendant, Equity Group Eufaula Division, LLC (“Equity Group”), by its undersigned counsel, and respectfully submits this Motion for Summary Judgment, and pursuant to Rule 56 of the Federal Rules of Civil Procedure, moves this Court for an order granting summary judgment in its favor on all of Plaintiff’s claims asserted against Equity Group because there is no genuine issue of material fact and Equity Group is entitled to judgment as a matter of law. More specifically, in support of its motion, Equity Group states as follows:

1. Under applicable summary judgment standards, summary judgment is warranted in this case because the undisputed factual evidence and the substantive federal and Alabama law foreclose Plaintiff from recovering against Equity Group.

2. All of Plaintiff’s non-willful claims under the Fair Labor Standards Act (the “FLSA”) are barred by the statute of limitations.

3. Plaintiff cannot prove that Equity Group retaliated against him in violation of 29 U.S.C. § 215(a)(3) by terminating him after he complained about the amount of hours he was working, as Equity Group terminated him for a legitimate, non-retaliatory reason that was not

pretextual. Furthermore, Plaintiff cannot prove that Equity Group willfully violated the FLSA when it terminated Plaintiff so as to invoke the three-year statute of limitations applicable to willful violations.

4. Plaintiff's state law fraud claim is barred by the applicable two-year statute of limitations.

5. Equity Group's motion is based on:

- A. The pleadings;
- B. The deposition of Plaintiff (with exhibits)
- C. The deposition of other witnesses (with exhibits); and
- D. Affidavits.

Equity Group has filed contemporaneously herewith its Narrative Statement of Undisputed Facts and Memorandum of Law in Support of its Motion for Summary Judgment and its Evidentiary Submission in Support of its Motion for Summary Judgment.

WHEREFORE, for the foregoing reasons, and the reasons set for the its Narrative Statement of Undisputed Facts and Memorandum of Law in Support of its Motion for Summary Judgment, which is being filed contemporaneously herewith and incorporated herein by reference, Equity Group requests that summary judgment be entered in its favor as to all of Plaintiff's claims.

Respectfully submitted,

/s/ Joel P. Smith, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel of record via electronic service on this 28th day of July, 2008:

Jerry Roberson, Esq.
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/s/ Joel P. Smith, Jr.
OF COUNSEL